IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 36131 of 2007(B)

PETITIONER:

M/S.JOHNSON AND JOHNSON LTD.,
DOOR NO.XI/423, HMT ROAD,
KALAMASSERY, PIN 683 503

BY ADV. SRI.JOSEPH JERARD SAMSOM RODRIGUES

RESPONDENTS:
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1. **ASSISTANT COMMISSIONER (ASSMT)**
   KVAT , SPECIAL CIRCLE-1
   ERNAKULAM.

2. **ASSISTANT COMMISSIONER (AUDIT ASSMT)**
   O/O. THE DEPUTY COMMISSIONER (AUDIT ASSMT),
   COMMERCIAL TAXES, ERNAKULAM.

3. **DEPUTY COMMISSIONER (APPEALS)**
   COMMERCIAL TAXES, ERNAKULAM.

4. **INSPECTING ASSISTANT COMMISSIONER**
   DEPT. OF COMMERCIAL TAXES,
   ERNAKULAM.

BY GOVT. PLEADER, SRI. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON 11/12/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 36131 OF 2007 B

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Dated this the 11th December, 2007

J U D G M E N T

The challenge in this writ petition is against Ext. P6 order passed by the 3rd respondent. Ext. P6 is an order passed granting stay on the petitioner remitting 50% of the tax amount and furnishing security for the balance amount to the satisfaction of the assessing authority.

2. Ext. P3 is the order of assessment for the assessment year 2005-06 against which the petitioner filed Exts. P4(a) to (g) appeals. In the stay petitions that were filed, the appellate authority considered the contentions and issued Ext. P6 conditional order.

3. Ext. P6 order discloses that the appellate authority has considered the prima facie case made out by the appellant for a conditional stay. Ext. P6 also refers to the contentions that were urged before the appellate authority. It is in appreciation of the contentions so urged that the appellate authority granted the

conditional stay, exercising its discretionary power.

4. Though counsel for the petitioner raised arguments on the merits of the appeal that their liability to pay tax is only at the rate of 4% and not 12.5%, as levied by the assessing authority, I am not inclined to consider the same. According to me, these are matters for the appellate authority to consider. The appellate authority having considered all aspects of the matter, I do not find any perversity in the approach of the appellate authority, it having satisfied itself on the prima facie case made out by the petitioner. In exercise of the discretionary power the appellate authority has granted stay on condition that the petitioner remits 50% of the tax. That exercise of discretionary power, in the absence of any perversity as aforesaid, does not call for any interference under Article 226 of the Constitution.

Writ petition fails and is dismissed.

ANTONY DOMINIC
JUDGE

jan/-